

Matilda Sanders

ORIGINAL

From: on behalf of Filings@psc.state.fl.us
To: Barclay, Lynn
Subject: RE: 040527-TP BellSouth's Bayó letter requesting Commission take official recognition of a Kentucky decision

From: Barclay, Lynn [mailto:Lynn.Barclay@BellSouth.com]
Sent: Thursday, May 05, 2005 10:42 AM
To: Filings@psc.state.fl.us
Cc: Fatool, Vicki; Linda Hobbs; Nancy Sims; Holland, Robyn P; Bixler, Micheale; Slaughter, Brenda ; Marcus, Theodore
Subject: 040527-TP BellSouth's Bayó letter requesting Commission take official recognition of a Kentucky decision

A. Lynn Barclay
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B. Docket No. 040527-TP: Enforcement of Interconnection Agreement Between BellSouth and NuVox

C. BellSouth Telecommunications, Inc.
on behalf of Nancy B. White

D. 8 pages total

E. BellSouth's Bayó letter requesting Commission take official recognition of a Kentucky decision.

<<040527 kentucky decision.pdf>>

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04408 MAY-5 05

5/5/2005

FROM COMMISSION CLERK

ORIGINAL

Legal Department

NANCY B. WHITE
General Counsel - FL

BellSouth Telecommunications, Inc.
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May 5, 2005

Mrs. Blanca S. Bayó
Director, Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 040527-TP
BellSouth v. NuVox

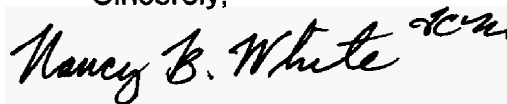
Dear Ms. Bayó:

By this letter, BellSouth Telecommunications, Inc. ("BellSouth") requests that the Commission officially recognize the decision of the Kentucky Public Service Commission ("KPSC") in:

In the Matter of BellSouth v. NewSouth Communications Corp., Order, Case No. 2004-00295 dated April 15, 2005 (attached). The KPSC's decision bears directly on the issues raised in BellSouth's pending Motion For Summary Disposition.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



Nancy B. White

Enclosures

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey

DOCUMENT NUMBER-DATE

04408 MAY-5 05

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket No. 040527-TP

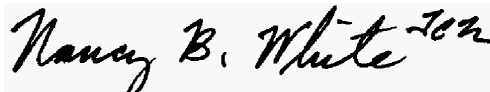
I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and FedEx this 5th day of May, 2005 to the following:

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Nancy B. White

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BELLSOUTH TELECOMMUNICATIONS, INC.)	
COMPLAINANT)	
v.)	CASE NO. 2004-00295
NUVOX COMMUNICATIONS, INC.)	
DEFENDANT)	

O R D E R

On July 26, 2004, BellSouth Telecommunications, Inc. ("BellSouth") filed with the Commission the above-styled complaint to enforce the audit provisions in Attachment 2, Section 10.5.4, of BellSouth's interconnection agreement with NuVox Communications, Inc. ("NuVox") and for appropriate relief for NuVox's breach of the parties' agreement. BellSouth states that, pursuant to the agreement, it is entitled to audit NuVox's records to verify the type of traffic being placed over combinations of loop and transport elements. BellSouth has given NuVox notice of its intent to conduct the audit and to seek appropriate relief as the audit dictates. NuVox has refused to allow the audit.

Section 10.5.4 in Attachment 2 of the interconnection agreement authorizes BellSouth, upon 30 days' notice to NuVox, to audit NuVox's records to verify the type of traffic being transmitted over combinations of loop and transport network elements purchased by NuVox from BellSouth to determine whether NuVox is providing a significant amount of local exchange service over the loop and transport combinations. The facilities to be audited were originally purchased as special access facilities, but

were converted to Extended Enhanced Links ("EELs") based on NuVox's self-certification that such facilities were being used to provide a "significant amount of local exchange service." In accordance with Federal Communications Commission's ("FCC") rules, combinations of loop and transport network elements, such as EELs, may be purchased in lieu of tariffed special access services if used to provide a "significant amount of local exchange service." However, the carrier requesting conversion must certify that the facilities will be used to provide a "significant amount of local exchange service." Pursuant to the agreement, NuVox converted 159 circuits in Kentucky from special access to EELs, beginning in 2000.

BellSouth has examined its own records and determined that an inordinately low amount of local exchange traffic was passing between NuVox and BellSouth. This led BellSouth to question the use of the facilities. BellSouth gave notice to NuVox to audit the facilities, but NuVox has refused to allow the audit to proceed. BellSouth needs NuVox's cooperation to audit the facilities. Using its own records, BellSouth determined that it was providing local exchange service for 21 circuits to NuVox customers in Kentucky. Therefore, BellSouth asserts that since NuVox is not the exclusive provider of local exchange service, it is not providing a "significant amount of local exchange service" as NuVox certified to BellSouth. In January of 2004, BellSouth reexamined its records and determined that it remained the local service provider for 15 circuits that NuVox certified were being used to provide a "significant amount of local exchange service."

BellSouth states that NuVox has refused to allow the audit on the grounds that the auditor selected is not independent and that BellSouth has not shown sufficient reason exists to conduct the audit.

NuVox responded to BellSouth's complaint on August 17, 2004 and asserts that the complaint is without merit and should be dismissed or denied. NuVox states that the agreement incorporates certain auditing requirements set forth in the FCC's Supplemental Order Clarification,¹ and does not provide BellSouth with unfettered discretion to conduct an audit of all circuits converted from special access to EELs. NuVox points to the decision of the Georgia Public Service Commission ("Georgia PSC") in which it reviewed a similar complaint. The Georgia PSC found that BellSouth must demonstrate a concern prior to conducting an audit of a converted circuit. The Georgia PSC also found that BellSouth must hire an independent auditor to conduct the audit in compliance with AICPA standards. The Georgia PSC ultimately found that BellSouth did demonstrate a valid concern over 44 circuits but the auditor that BellSouth selected was not acceptable.

On September 14, 2004, BellSouth filed a motion for summary disposition of its complaint to enforce the audit provisions in the agreement. NuVox has refused the audit because BellSouth has not: (1) shown a demonstrated concern; (2) linked its concern to each and every circuit to be audited; (3) confirmed that it seeks to audit only those circuits for which such linkage is demonstrated; and (4) hired a suitably independent auditor to conduct the audit in accordance with AICPA standards.

¹ Supplemental Order Clarification, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 00-183 (rel. June 2, 2000).

BellSouth claims that none of this language is included in the parties' agreement and that NuVox misconstrues its argument using language from FCC rules that are not incorporated within the voluntarily negotiated interconnection agreement between the parties.

On October 1, 2004, NuVox replied to BellSouth's motion. NuVox opposes the motion and states that the Commission should rely on the decision of the Georgia PSC. NuVox claims that the Georgia Order supports its position that it has done nothing wrong and that BellSouth must demonstrate concern and use an independent auditor in compliance with AICPA standards.

Additionally, on October 1, 2004, NuVox filed a motion for a procedural schedule. Specifically, NuVox requests that the Commission: (1) adopt and incorporate into this case the record compiled in the Georgia proceeding; (2) adopt the same legal conclusions reached by the Georgia PSC; (3) establish, to the extent the Commission considers adopting legal conclusions that differ from the Georgia PSC, a schedule for oral argument and briefing; and (4) establish, with respect to the Kentucky-specific ~~for~~ factual issues, including whether BellSouth has demonstrated a concern with respect to ~~the~~ 15 converted EEL circuits it seeks to audit, a schedule for prefiled testimony and a limited evidentiary hearing. Finally, on October 20, 2004, BellSouth filed its reply in support of its motion for summary disposition.

The Commission finds that it is not necessary to conduct a hearing at this time. BellSouth has complied with Section 10.5.4 in Attachment 2 of the interconnection agreement between the parties and is entitled to audit NuVox's records in order to verify

the type of traffic being carried over the combinations of loop and transport network elements. However, the Commission finds that the audit should be limited to those 15 circuits for which BellSouth has shown sufficient concern and reasonably identified as circuits for which it remains the local service provider. BellSouth has chosen an auditor and by affidavit professed the auditor's independence. The agreement allows BellSouth to select the auditor, and it is not a condition that the auditor must be approved by NuVox or the Commission. NuVox may challenge the auditor's qualifications or bias and the veracity of any conclusions, along with the reasonableness of any remedies sought by BellSouth as a result of the audit, upon the filing of a complaint by BellSouth, pursuant to the process outlined by Section 10.5.4 in Attachment 2 of the interconnection agreement.

IT IS THEREFORE ORDERED that:

1. NuVox's motion for a procedural schedule and hearing is denied.

2. BellSouth's motion for summary disposition is granted in part and denied in part.

3. BellSouth is entitled to audit only those 15 circuits, as discussed herein, that it has identified and for which it has shown concern to verify the type of traffic being transmitted. NuVox should allow BellSouth to begin the audit process no later than 30 days from the date of this Order.

4. This matter will remain on the Commission's docket pending the outcome of the audit.

Done at Frankfort, Kentucky, this 15th day of April, 2005.

By the Commission

Commissioner W. Gregory Coker did not participate in the deliberations or decision concerning this case.

ATTEST:


Executive Director

Case No. 2004-00295